



P.O. Box 2170  
Fairfield, Iowa 52556 USA  
Fax: 1-641-472-2642

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JUL 23 2001

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July 20, 2001

Federal Communications Commission  
Office of the Secretary  
445 12<sup>th</sup> Street, SW  
Room TW-A325  
Washington, D.C. 20554

**Re: Universal Services Fee Docket Nos. 96-45 and 97-21**

Dear Federal Communications Commission,

Please find attached a number of correspondences between our company and the Universal Service Administrative Company ("USAC"). You will see from the most recent correspondence dated June 25, 2001 that USAC has denied both the waiver of the Universal Services Fee ("USF") payment of \$144,720.65 for 1999 and a refund of \$256,938.68 of payments made for 1997 and 1998. We wish to appeal this action by the USAC and respectfully ask the FCC to intervene on our behalf in this matter.

The charges claimed by the USAC are totally without basis or merit. Our company has been an innovator of telecommunications services for the past nine years, and has contributed significantly to the growth and increasing liberalization of the telecom industry worldwide. We have primarily offered services to non-U.S. residents to their customers and families around the world. As documented in the attached supporting material, we do not initiate a significant amount of traffic from the U.S.; the vast majority originates internationally. We should therefore not be required to pay a USF (which was specifically designed for domestic services only) on the international portion of our business.

As you are aware, our position has been totally vindicated by a 1999 decision in the United States Court of Appeals for the Fifth Circuit. The ruling indicated that imposing a USF contribution requirement (in our case, of more than \$400,000) on carriers like USA Global Link was, and always had been, arbitrary and

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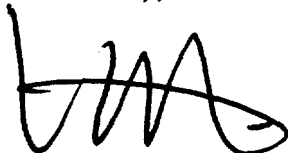
capricious, and that the decision by the USAC to apply the Court's ruling prospectively is without foundation or legal sanction.

As pointed out by Joseph F. Starcevic, our former Vice President and Chief In-House Counsel, there is nothing in the Court's ruling to support USAC's position, and that in adopting the most aggressive tactic possible, the USAC has gone well beyond its authority and is doing nothing more than gouging the resources of carriers like USA Global Link. Indeed, the Court ruled that in imposing the contribution requirement from the beginning, the USAC had been in violation of the requirement of the statute and of the FCC's authority.

Our company has had a long and productive relationship with the FCC. We have contributed to the fulfillment of the mission of the FCC in a variety of ways both at home and abroad. For example, through our repeated and professional engagements at conferences, seminars, and in other telecom and legal venues, including the ITU, we have upheld the goals and objectives of international liberalization and transparency. It is therefore extremely ironic that we should face such irrational, unauthorized and thoroughly draconian measures by a company like the USAC here in the United States. Moreover, under the burden of unauthorized actions like those taken by the USAC, as with so many others in our industry, we face significant hardships in operating a successful business. Without the intervention of the FCC in this matter, we fear our ability to operate will be significantly jeopardized.

Pursuant to our argument on the legitimacy of the action taken by the USAC, we kindly, and in the strongest possible terms, request the FCC to intervene and rule in our favor on this matter.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'L. C. Fergusson', written over a horizontal line.

Dr. Lee C. Fergusson  
President and COO  
USA Global Link, Inc.

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Universal Service Administrative Company

D. Scott Barash  
Vice President and General Counsel  
[sbarash@universalservice.org](mailto:sbarash@universalservice.org)

June 25, 2001

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BY FEDERAL EXPRESS

Joseph F. Starcevic  
Vice President & Chief In-House Counsel  
USA Global Link, Inc.  
PO Box 2170  
2000 Mansion Drive  
Fairfield, IA 52556

Re: USA Global Link, Inc. (ID # 811486) Letter Dated June 5, 2001

Dear Mr. Starcevic:

This letter responds to your letter to USAC dated June 5, 2001 requesting a recalculation of the 1998 and 1999 Universal Service Support Mechanisms obligations for USA Global Link, Inc. (Filer ID #811486), please be advised that the Universal Service Administrative Company (USAC) has carefully reviewed and examined the Federal Communications Commission's (FCC) *Sixteenth Order on Reconsideration (Remand Order)* released and adopted October 8, 1999<sup>1</sup> and the FCC's Public Notice released October 8, 1999.<sup>2</sup>

The *Remand Order* modified Sections 54.706 and 54.709 of the FCC's rules. These rule changes became effective November 1, 1999. All Universal Service Support Mechanisms obligations calculated after November 1, 1999 are bound by these modified rules. Invoices calculated prior to November 1, 1999 are final. USAC does not have authority to issue the refund sought by USA Global Link, Inc. These documents clearly define the financial obligations of USA Global Link to the Universal Service Support Mechanisms and do not require either a refund to USA Global Link of 1998 and 1999 payments, nor a recalculation of November 1999 and December 1999 invoices.

<sup>1</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Access Charge Reform*, CC Docket No. 96-262, *Sixteenth Order on Reconsideration* i CC Docket No. 96-45, *Eighth Report and Order* in CC Docket No.96-45, *Sixth Report and Order* in CC Docket No. 96-262, FCC 99-290 (released October 8, 1999)(*Remand Order*).

<sup>2</sup> *Proposed Fourth Quarter 1999 Universal Service Contribution Factor for November and December 1999*, CC Docket 96-45, Public Notice, DA 99-2109 (Common Carrier Bureau released October 8, 1999).

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Joseph F. Starcevic

June 25, 2001

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If you disagree with the USAC response, you may file an appeal with the Federal Communications Commission (FCC) within 30 days of the date of this letter. The FCC address where you may direct your appeal is:

Federal Communications Commission  
Office of the Secretary  
445 12<sup>th</sup> Street, SW  
Room TW-A325  
Washington, DC 20554

Please be sure to indicate the following information on all communications with the FCC:  
"Docket Nos. 96-45 and 97-21."

Sincerely yours,

UNIVERSAL SERVICE ADMINISTRATIVE COMPANY

A handwritten signature in black ink, appearing to read 'D. Scott Barash', with a long horizontal flourish extending to the right.

By: D. Scott Barash  
Vice President and General Counsel

DSB:tb

cc: James Shook, FCC Enforcement Bureau  
Anita Cheng, FCC Common Carrier Bureau  
Paul Garnett, FCC Common Carrier Bureau

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P.O. Box 2170  
2000 Mansion Drive  
Fairfield, IA 52556

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June 5, 2001

Ms. Anita Cheng  
Mr. Paul Garnett  
Federal Communications Commission  
Common Carrier Bureau  
445 12<sup>th</sup> Street SW  
Washington, DC 20554

Ms. Lisa I. Harter  
Manager – Universal Service  
Universal Service Administrative Company  
80 South Jefferson Rd.  
Whippany, NH 07981

RE: USA GLOBAL LINK, INC.  
Filer 499 ID: 811486

Dear Ms. Cheng, Mr. Garnett and Ms. Harter:

This letter is in reference to a refund request sent to USAC over 1 ½ years ago, and to repeated mailings from USAC of a Statement of Account which instead shows a substantial balance due.

USA Global Link, Inc. is a provider of international long distance services – primarily callback. Any interstate traffic which the company had was incidental to that international callback business, and interstate revenues were de minimus relative to the company's international revenues. In November of 1999, USA Global Link sent to USAC a request (copy enclosed) for refund of over \$250,000. This was based upon the 1999 decision of the United States Court of Appeals for the Fifth Circuit in *Texas Office of Public Utility Counsel, et al v. Federal Communications Commission*. In that case, the Court held that the FCC's interpretation which resulted in the imposition of USF contribution obligations on carriers whose traffic was almost entirely international was "arbitrary and capricious and manifestly contrary to the statute" and did not, therefore, satisfy the statutory requirement that contribution requirements be "equitable and nondiscriminatory." USA Global Link derived over 96% of its revenues from international traffic.

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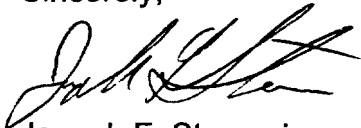
Despite the Court's decision that imposition of these contribution requirements on carriers like USA Global Link was and always had been arbitrary and capricious and therefore outside of the FCC's authority, USAC has apparently taken the position that USF collections only need comply with the Court's decision prospectively. There is nothing in the Court's decision to support such a position, since the Court's finding that imposition of USF contribution requirements on carriers like USAGL was outside of the agency's authority was without any reference to a certain point in time in which circumstances rendered it so. Rather, the court held that doing so simply was, and therefore had been from the beginning, a violation of the requirements of the statute and of the FCC's authority.

Accordingly, under this decision USA Global Link is entitled to refund of its contributions of \$222,100.55 for 1998 and \$34,838.18 for 1999 since the Court held that the FCC never had authority to require contribution of any amount by a carrier like USA Global Link with de minimus interstate traffic. Not only has USAC failed to comply with the Court's decision that the FCC was without authority to require these contributions by refunding these amounts, USAC has instead billed USA Global link for an additional contribution of over \$100,000 for 1999, calculated as if the Court's decision had never happened, and has been adding late payment penalties ever since that time.

As I'm sure the Commission is aware, small telecommunications carriers like USA Global Link are experiencing severe financial strain currently. Bankruptcy filings by carriers are now an almost daily occurrence. In this environment, for the Universal Service Fund to retain for so long these funds, which are a very considerable amount to a small carrier, that the FCC never had the right to require be contributed in the first place is unconscionable. USA Global Link respectfully requests immediate attention to this matter, immediate issuance of the above-referenced refunds and cessation of the invoicing for additional contributions for 1999 and late payment penalties. A copy of the most recently received invoice is enclosed.

Thank you for your attention to this matter.

Sincerely,



Joseph F. Starcevic  
Vice President & Chief In-House Counsel

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International Headquarters:

50 North Third Street

Fairfield, Iowa 52556

Tel: 515-472-1550

Fax: 515-472-1620

November 22, 1999

Ms. Lisa I. Harter  
Manager - Universal Service  
Universal Service Administration Co.  
80 South Jefferson Rd.  
Whippany, NJ 07981

RE: Filer 499 ID 811486

Dear Ms. Harter;

Enclosed are copies of amended or revised USF filings for USA Global Link, Inc. for the following periods: year 1997, year 1998 and January to June 1999. We used the amendments sent to us for the Limited International Revenues Exception for year 1997 and 1998, but have revised our 1<sup>st</sup> half of 1999 Form 499-S instead of using the amendment provided. The explanation follows.

After reading the Public Notice dated October 28, 1999 and the letter from you dated November 2, 1999, we have re-calculated our USF revenue base based upon our interstate revenue. This re-calculation has provided us with the knowledge that we meet the de-minimus standard for all of the above reporting periods. Therefore, we choose to revise our September form 499-S because if we filed the amendment, we were not certain that the results would be favorable. This is because the contribution revenues of our original filing included interstate and US to international calls, but not calls that originated internationally and terminated in the U.S. According to the 499-S instructions, we have until January 31, 2000 to revise this filing.

We also choose to amend our 1997 filing for the following reasons: we have been charged and paid \$222,100.55 in 1998 for a previously reported USF revenue base that included more than 96.60% international end-user retail revenue. In re-calculating the revenue base we find that we should have qualified for the de-minimus standard as shown on our amendment. Therefore, we request a refund of the total amount of Universal Service paid in 1998 plus interest.

We amended our 1998 filing and similarly found that we should have qualified for the de-minimus standard. In 1999 we have paid \$34,838.13 in Universal Service contributions and have been billed for \$159,350.08. We request a refund for the total amount paid this year plus interest.

Sincerely,

A handwritten signature in cursive script that reads "Tina Rukgaber".

Tina Rukgaber  
Controllor

Enclosed: (copies 1997 & 1998 USF amended filings and 1999 USF revised filing)  
Copy: Daniel J. Hartnett, Joseph Staroevic

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The world's largest reseller of discount international telecommunications services

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USA Global Link, Inc.  
50 N. Third St.  
Fairfield, IA 52556  
Attention: Susan J. Petersen

Date: 04/23/2001  
Invoice #: UINV0040001541  
Filer 499 ID: 811486

**Mail Payment To:**

Universal Service Administrative Company  
PO Box 371719  
Pittsburgh, PA 15251-7719

**STATEMENT OF ACCOUNT**

**Detail of Charges:**

Date		Amount	Total
	Previous Balance		\$ 143,706.73
04/16/01	Late Payment Penalty	1,013.92	
	<b>Total Current Charges:</b>		<b>\$ 1,013.92</b>

**Detail of Payments/Credits:**

Date	Amount
------	--------

**Total Payments/Credits:** \$ 0.00

**Balance Due USAC:** \$ 144,720.65

Payment must be received by 05/15/2001 to avoid late payment charges  
Please remit pink copy with payment to ensure proper credit  
Transactions occurring after 04/16/2001 are not reflected on this statement  
Direct questions to the Fund Administrator - (973) 884-8598

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